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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

T.P.,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E066742

(Super.Ct.No. RIJ1400796)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Jacqueline C.

Jackson, Judge. Petition denied.

Anastasia M. Georggin for Petitioner.

No appearance for Respondent.

Gregory P. Priamos, County Counsel, Julie Koons Jarvi, Deputy County Counsel

Petitioner T.P. (father) filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452 challenging the juvenile court's order terminating reunification services as to his children, A.P. and I.S. (the children) and setting a Welfare and Institutions Code¹ section 366.26 hearing. Father requests a stay of the section 366.26 hearing, pending the granting or denial of this writ petition. We deny the request for a stay and the writ petition.

FACTUAL AND PROCEDURAL BACKGROUND

On July 29, 2014, Riverside County Department of Public Social Services (DPSS) filed a section 300 petition on behalf of the children and their half sibling, J.K, who was a newborn. A.P. was five years old at the time, and I.S. was 4 years old. The petition alleged that the three children came within provisions of section 300, subdivisions (b) (failure to protect), and (g) (failure to support). The petition included the allegations that the children's mother, M.S. (mother),² abused controlled substances, which resulted in J.K. testing positive for amphetamines at the time of his birth. The petition also alleged that mother and J.K.'s father, P.K., with whom all three children lived, neglected the health and safety of the three children. The petition alleged that father was not a member of the children's household and had failed to provide them with adequate food, clothing, shelter, medical treatment, and protection. Mother reported that she had minimal contact with him and did not know where he lived.

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

² Mother is not a party to this writ petition.

The court held a hearing on July 30, 2014, and detained the three children. (This writ petition only concerns the children, A.P. and I.S.)

Jurisdiction/Disposition

The social worker filed a jurisdiction/disposition report on August 27, 2014, and recommended that the court sustain the petition, declare the children dependents of the court, and provide reunification services to father. The social worker reported that father was located in Oregon. Father called the social worker, but could not provide his current address; he said did not know it by memory, since he had only lived there for four months. He confirmed his email address and provided a phone number.

The social worker reported that father and mother were married in 2007, but divorced in 2010, before the birth of their second child, I.S. Father reported that mother absconded with A.P. in 2010, while she was pregnant with I.S. He was unable to locate them and had no contact with mother or the children after that. Father reported that he had been with his current girlfriend for approximately three months. He admitted that he had a history of alcohol abuse, and stated that he got drunk about one time a week. He said he had been sober for 20 days. Father admitted that he was arrested in 1998 for possession of marijuana, and in 2004 and 2012 for driving under the influence. The social worker reported that father was arrested in 2008 for grand theft and was placed on probation for 36 months.

DPSS filed an amended section 300 petition on August 27, 2014, and then a second amended petition on September 18, 2014. The second amended petition added the allegations that father had a history of alcohol abuse and a criminal history.

At a hearing on September 2, 2014, the court found father to be the presumed father of the children.

The social worker filed an addendum report on September 26, 2014, and reported that father said he wanted to have the children placed in his care. However, the social worker was concerned about father's alcohol abuse issues and his inability to maintain a stable home. Father was drug tested, and the results were negative for all substances. Father admitted he smoked marijuana regularly. He attempted to enroll in a parenting education program, but he lived in a small, rural town in Oregon that did not have various service providers. The closest parenting program was 25 miles away, and the closest substance abuse treatment program was 60 miles away.

In an addendum report filed on October 30, 2014, the social worker reported that father had not yet enrolled in parenting education or substance abuse treatment, but was attending Alcoholics Anonymous/Narcotics Anonymous meetings.

The court held a contested jurisdiction hearing on November 4, 2014, and sustained the second amended petition, declared the children dependents, and ordered reunification services for father. The court also ordered an Interstate Compact for the Placement of Children (ICPC) for Oregon.

Six-month Status Review

The social worker filed a six-month status review report on April 15, 2015, and recommended that services be terminated. The social worker reported that father's case plan requirements included counseling, parenting education, substance abuse counseling, and substance abuse testing. The social worker gave him referrals for all of these

services. Father failed to appear at two of his scheduled appointments for substance abuse counseling. He attended one group meeting and then missed the next one. On March 12, 2015, he tested positive for benzodiazepines, ethanol, opiates, and marijuana. As to visitation with the children, father began calling them on February 20, 2015. He was authorized to make frequent and liberal calls. He made weekly calls, but did not have a set schedule.

The court held a contested six-month review hearing on June 23, 2015. The court continued services and set a 12-month status review hearing.

12-month Status Review Hearing

The social worker filed a 12-month status review report on September 16, 2015, and recommended that services be terminated. The social worker reported that father had been moving back and forth from his girlfriend's home in Oregon to his grandparents' home in California. Father was unemployed. He had visits with the children on May 3, 2015 and May 4, 2015, when he was in Riverside. He spoke to them weekly on the phone. The social worker reported that he submitted referrals for father's services on January 29, 2015, and resubmitted them on August 4, 2015. Father had not attended any program services yet.

The social worker further reported that father's ICPC request was denied due to his extensive criminal history, lack of financial resources, and relationship concerns. Father also left Oregon before his fingerprints could be completed.

The court held a contested 12-month review hearing on October 29, 2015. Father failed to appear. The court continued the hearing to December 9, 2015, and ordered father to be given notice.

In an addendum report filed on December 4, 2015, the social worker reported that he contacted father on November 25, 2015. Father said he had not been participating in his case plan because the weather in Oregon had been hindering him. He also said he had not been in contact with the children because he misplaced the phone number of the caregiver.

The court held a hearing on December 9, 2015, and father failed to appear. County counsel suggested the court set the contested 12-month review hearing for January 27, 2016, and that such hearing would be the 18-month hearing as well. The court continued the matter to January 27, 2016.

18-month Status Review Hearing

The social worker filed an 18-month status review report on January 15, 2016. The social worker reported that father was still not working. Father was recently arrested for domestic violence, and the charge was reduced to harassment. The social worker further reported that father recently attended two substance abuse groups. However, in December, he tested positive for alcohol and marijuana. The social worker opined that father was not stable, as he had been moving back and forth between Oregon and California. He had not participated in more than two substance abuse classes at a time in Oregon for the past 18 months, and had not participated in any other services. Father had

only visited his children two times during the 18 months of the dependency, and had only called them once in the last six months.

The court held a hearing on January 27, 2016, and father failed to appear. The court continued the matter to March 7, 2016. The matter was continued again to April 5, 2016, and then to May 11, 2016.

In an addendum report filed on March 7, 2016, the social worker reported that he received a report on February 18, 2016, from father's substance abuse counselor. The counselor reported that father began substance abuse counseling on December 28, 2015, and was reportedly attending his weekly and group sessions. However, he did not appear to be benefitting from his services, since he had not been able to provide a clean drug test. He had been tested every two weeks, and all tests had been positive for marijuana.

Father reported that he was working, and he spoke with the children every other day. On March 2, 2016, father told the social worker he was only taking his substance abuse classes because DPSS was telling him to. However, he did not feel he had a substance abuse problem.

In another addendum report filed on May 6, 2016, the social worker further reported that father's ICPC was denied because he had at least 11 criminal charges in Oregon, and he did not have appropriate housing. He was living in Oregon with his girlfriend and her children; however, his girlfriend lived in a HUD (Housing and Urban Development) apartment, and he was not approved to live there. Moreover, the ICPC social worker observed that father was abrasive, disrespectful, and emotionally abusive to his girlfriend. Thus, the social worker was concerned about father's ability to provide a

safe and nurturing environment for the children. Nonetheless, the social worker submitted a new ICPC referral on April 7, 2016. Father said he was a changed person. He married his girlfriend and got a full-time job. He said there were no HUD issues, since he and his wife moved into a new home. Father had also been actively participating in a substance abuse program since December 28, 2015. He was testing clean for alcohol, but positive for marijuana. Marijuana was legal in Oregon, and he was reportedly using it to ease his pain from a motorcycle accident. The social worker noted that father was to be discharged from the substance abuse program once he completed a clean drug test. However, he was unwilling to refrain from his marijuana use.

A hearing was held on May 11, 2016, and the matter was continued to June 29, 2016, and then again to August 17, 2016.

In an addendum report filed on August 12, 2016, the social worker reported that father had not attended his substance abuse program since May 4, 2016. Thus, he had not attempted to test clean and complete the program. Father said he did not have time for classes since he needed to work. He said he wanted his children back, but he was no longer going to fight it, for now. The social worker further reported that his ICPC request was denied again on July 25, 2016. It was denied because he was currently on probation in Oregon for an incident of disorderly conduct with his wife, and he appeared to be emotionally unstable, and because he was now required to participate in a batterer's program. However, he could not be assessed for the program until he successfully completed the substance abuse program. He simply needed to provide at least one clean substance abuse test, but he refused to return to the substance abuse program to be tested.

The court held a contested 18-month review hearing on August 17, 2016. It found that return of the children to father would create a substantial risk of detriment to the children's safety, protection, and well-being. The court further found that father had failed to make substantive progress in his case plan and terminated his reunification services. The court then set a section 366.26 hearing for December 15, 2016.

ANALYSIS

The Court Properly Found That Return of the Children to Father Would Create a Substantial Risk of Detriment

Father argues that the court erred in finding there was a substantial risk of detriment to the children if returned to his custody, since he made substantive progress in his case plan. We disagree.

A. Relevant Law

Section 366.22, subdivision (a), provides in relevant part: "After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment."

"Appellate justices review a respondent court's decision after a section 366.22 ruling as follows: 'Evidence sufficient to support the court's finding "must be 'reasonable in nature, credible, and of solid value; it must actually be "*substantial*" proof

of the essentials which the law requires in a particular case.’” [Citation.] “Where, as here, a discretionary power is inherently or by express statute vested in the trial judge, his or her exercise of that wide discretion must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]” [Citations.]’ [Citations.] In the presence of substantial evidence, appellate justices are without the power to reweigh conflicting evidence and alter a dependency court determination. [Citations.]” (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705 (*Constance K.*))

B. *The Evidence Was Sufficient*

Here, the evidence demonstrated that returning the children to father’s custody would be detrimental to them. Father’s case plan consisted of counseling, parenting education, substance abuse counseling, and substance abuse testing. By the time of the 12-month review hearing, father had not attended any program services. He then began to attend a substance abuse treatment program, but he never completed it, and he continued to test positive for marijuana. In his writ petition, father suggests that testing positive for marijuana was insignificant because marijuana was legal in Oregon. However, he could not complete his substance abuse program until he could provide at least one clean drug test. Although he was told he would be discharged from the substance abuse program once he completed a clean drug test, he was unwilling to refrain from his marijuana use. Furthermore, he never completed any other aspect of his case plan. “The failure of the parent or legal guardian to participate regularly and make

substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental.” (§ 366.22, subd. (a)(1).)

By the time of the 18-month hearing, the juvenile court had to order the return of the children to father, unless it found, by a preponderance of the evidence, that such return would create a substantial risk of detriment to the children. (§ 366.22, subd. (a).) The evidence of detriment here was sufficient since father failed to participate regularly or make substantive progress in his case plan.

We note father’s additional argument that the juvenile court erred in not placing the children with him on an extended visit, despite the denial of the ICPC with the state of Oregon. He claims that, “[u]pon a successful visit, the court could have terminated dependency without the need of ICPC approval.” However, placement with father did not depend on whether or not the ICPC was approved. “California cases have consistently held that the Interstate Compact on Placement of Children [citation] does *not* apply to an out-of-state placement with a parent.” (*In re C.B.* (2010) 188 Cal.App.4th 1024, 1026.) The ICPC applies to placements with relatives, legal guardians, or persons who are unrelated to the child. (Cal. Rules of Court, rule 5.616, subd. (b)(1).)

Furthermore, as discussed *ante*, the court properly determined that returning the children to father would create a substantial risk of detriment to them. He failed to complete his case plan, despite having 18 months of reunification services. Thus, we cannot say the court abused its discretion in terminating services and setting a section 366.26 hearing. (*Constance K.*, *supra*, 61 Cal.App.4th at p. 705.)

DISPOSITION

The writ petition is denied. The request for a temporary stay of the section 366.26 hearing is also denied.

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HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

SLOUGH
J.